


EEO



What You Need to Know to File an EEO Complaint

NASA GODDARD SPACE FLIGHT CENTER
EQUAL OPPORTUNITY PROGRAMS



Policy

The Goddard Space Flight Center does not tolerate discrimination based on race, color, national origin, gender, religion, age, physical or mental disability, or in retaliation for any prior involvement in EEO activity. Center management will work with individuals who feel they have experienced discrimination to understand the nature and impact of the activities involved and to seek a mutually satisfactory resolution to the issues presented.

This pamphlet provides an overview of the Equal Employment Opportunity Discrimination Complaints process. It describes options that are unique to Goddard, explains complainant rights and responsibilities, and outlines what an employee can expect if a complaint goes formal.

For more information, contact the Equal Opportunity Programs Office.
301-286-7348 (Voice/TTY) or any
EEO Counselor listed on the website
<http://eeo.gsfc.nasa.gov/complaints.html>.

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Laws & Regulations

Title VII of the Civil Rights Act of 1964, as amended

Title VII prohibits discrimination based on race, color, religion, sex, or national origin. The Civil Rights Act also prohibits retaliation for participation in the discrimination complaints process or for opposing any unlawful employment practice under its authority.

Age Discrimination in Employment Act of 1967, as amended

The Age Discrimination in Employment Act (ADEA) prohibits discrimination in employment based on age (≥ 40).

Rehabilitation Act of 1973, as amended

The Rehabilitation Act of 1973 prohibits discrimination based on mental or physical disability and requires that agencies reasonably accommodate the known physical or mental limitations of qualified employees and applicants with disabilities. Recent amendments also compel (unless it places an undue burden) the agency to ensure individuals with disabilities access to electronic and information technology that is comparable to that available to persons who do not have disabilities.

Equal Pay Act of 1963

The Equal Pay Act (EPA) prohibits sex-based wage discrimination. The EPA prohibits agencies from paying employees of one sex lower wages than those of the opposite sex for equal work performed under similar working conditions.

Title 29 Code of Federal Regulations, Part 1614

29 CFR Part 1614 contains the regulations that govern the processing of federal sector discrimination complaints.

Employees who feel they have experienced age based discrimination or sex-based wage discrimination have the right to file claims directly in civil court. More information is available on these options on pages 21-23.

Copies of the laws and regulations are available at www.eeoc.gov

Introduction

The Equal Employment Opportunity (EEO) complaints process provides individuals with an avenue of redress for perceived for actions taken against them in the workplace that they believe resulted from illegal discrimination. The actions cited may be personnel or work related, or they could have resulted from the Center's failure to respond appropriately. The EEO complaint process provides the individual with opportunities to seek either a mutual resolution of those issues with management or to request a validation by a third party concerning the claim of discrimination.

This pamphlet provides an overview of the EEO complaints process for Goddard employees and explains their rights and responsibilities. However, it does not offer all you may need to know about discrimination complaint laws or EEO regulations. For further information, please contact the EEO Office.

Complaint Process Overview

The EEO complaints process is a formal rights-based process. As such it makes provision for the collection and hearing of evidence, a finding or decision based on that evidence, and remedy or corrective action, if merited.

Informal Stage

The informal stage provides the aggrieved individual with the opportunity to fully define his or her concerns and gives the Center the opportunity to seek avenues of resolution without a finding on the merits of the allegations.

Formal Stage

The formal stage of the EEO complaints process is concerned with the development of evidence, the determination of discrimination, and corrective action, if appropriate. It consists of the investigation and decision phases. The investigation phase provides for the compilation of evidence through the taking of affidavits and gathering documents.

In the decision phase, the agency renders a judgment on the based on the evidence. The complainant may request a hearing by an EEOC judge before a decision on the merits of the complaint is made. If the complainant disagrees with the decision or if the investigation exceeds certain timeframes, the complainant may be entitled to appeal to the EEOC or to file suit in a Federal district court.

The EEO complaint process can be a lengthy one. NASA has made Alternative Dispute Resolution (ADR) options available at both the informal and formal stages of the EEO complaint process. These options can provide a means to expeditiously resolve complaint issues.

Process for Complaints of Illegal Discrimination: Informal Complaints

Any Goddard employee, including temporary and term appointees, or an applicant for employment who believes she or he has been discriminated against because of race, color, religion, sex, age, national origin, physical or mental disability, or in retaliation for involvement in prior EEO activity, must take part in the informal process before filing a formal EEO complaint. In some cases contractor employees may also seek redress through the EEO complaint process. (See page 28 for more complete information.)

Timeliness

To begin the process you must contact the EEO office (301-286-7348) or an EEO counselor **within 45 calendar days of the incident you believe to be discriminatory**. Counselors are listed at: <http://eeo.gsfc.nasa.gov/complaints.html#couns>

Rights

Under the law you are guaranteed the right to anonymity during the informal process, the right to representation throughout the complaint process, and the right to a reasonable amount of official time to prepare your complaint.

Anonymity

You have the right to remain anonymous during the informal complaint process. If you request anonymity, the EEO office or EEO counselor will honor your request.

Representation

You may designate a representative at any time during the complaint process, including the counseling stage. The EEO counselor is not an advocate for either you or the center.

Official Time

Employee complainants and their designated representatives, if also employed by the GSFC, may expect a reasonable amount of official time to present the complaint and respond to the agency requests for information if they are in duty status. The term duty status refers to an employee's normal hours of work. What constitutes a reasonable amount of official time may vary from case to case. Employees seeking official time for EEO-related matters must receive advance approval from their immediate supervisors.

What to Expect in the Informal EEO Complaint Stage

In the initial meeting, the EEO counselor will gather information about issues in your complaint and tell you about the complaint process. The counselor will also explain your choice to engage in either traditional counseling or ADR mediation during the informal phase (*see the next section for more information on ADR*).

The EEO Counselor conducts informal inquiries into the issues raised in the complaint. The counselor may gather some documents or interview managers or co-workers. Usually the counselor will meet separately with you and the other party (ies), but, if both parties agree, she or he may meet with you at the same time. The purpose of the counselor's inquiry is to help him or her understand the issues at hand and

to seek a resolution to them. The counselor will be careful to safeguard the privacy of all parties involved. So for example, if you request a comparison with other employees, the counselor cannot reveal the identities of the comparative individuals.

The goal of counseling is an agreeable resolution to the issue. In trying to resolve the dispute the counselor may discuss settlement alternatives with other involved parties. Settlement discussions are confidential. A willingness to discuss resolution does not suggest that either party feels that his or her position is strong or weak. The counselor does not make a judgment concerning the merit of the case.

- If the issues raised are resolved, you and the other party (ies) will sign a written agreement.
- If the matter is not resolved within 30 calendar days from the date on which you first seek EEO counseling, the EEO counselor may ask you to agree to extend counseling for up to 60 days. Your agreement to extend counseling must be in writing.
- If the matter is not resolved at the end of the counseling period, including the extended period (if agreed to), the EEO counselor will conduct a final interview and issue you a notice of your right to file a formal EEO complaint. This notice will be either given to you in person or sent via certified mail.
- If you decide to file a formal EEO complaint, the EEO counselor will prepare a written report to document the counseling activity.

Alternative Dispute Resolution (ADR) Program

When you seek EEO counseling, the EEO Counselor will tell you about the Goddard's Alternative Dispute Resolution (ADR) Program. The ADR process is an opportunity for you and the appropriate management official to discuss your complaint with the help of a professionally trained mediator who is not a Goddard employee. Mediators support the parties in identifying the core issues and underlying interests of their dispute and exploring a range of solutions. Employees often find this opportunity for direct communication satisfying and effective.

Your participation in ADR is voluntary and would take place during work hours. While the mediation process is completely confidential, it is not possible to maintain the right of anonymity.

A discussion of the issues with the EEO officer and the ADR Program Manager will help you determine if ADR is appropriate for your situation. If ADR is appropriate for your case and you decide to take part in the ADR process, you must sign a written agreement to do so. At that time the informal complaint stage is automatically extended from 30 to 90 days from the date of your initial contact with the EEO counselor. Mediation will be arranged through Goddard's ADR Program Manager.

- If the matter is resolved, a copy of the written resolution agreement will be kept the EO Office as part the case file.

- If the matter is not resolved within 90 calendar days, the ADR Office will refer you back to an EEO counselor who will issue you a notice of the right to file a formal EEO complaint.



Formal Complaints Process

If the informal EEO complaints process does not result in a satisfactory resolution of the issues within the allowed timeframes, you will be given the option to file a formal EEO complaint. If you are a bargaining unit member, you will have to decide between the EEO process and the negotiated grievance process (see page 29). Employees with Age Discrimination in Employment Act, Equal Pay Act, or mixed EEO and Merit System Protection Board Cases should read the sections in this booklet that address those issues (pp. 21-25) and seek additional advice before making a decision to file a formal complaint. Goddard contractors should read the information on page 28.

Loss of Anonymity

If you decide to file a formal complaint, your identity will not be kept confidential during the formal complaint process. When a complaint reaches the formal stage, the complaint file may be opened to the parties who are involved and who require access to it for investigative or decision making purposes.

Representation

In the formal complaint phase, you must designate your representative in writing and have your signature notarized. Your EEO counselor will give you a form to designate a representative at the time you receive the notice of the right to file a formal complaint. Designation of a representative entitles him or her to receive copies of all correspondence from the agency to you. A designation remains in effect until it is cancelled in writing.

Filing a Formal Complaint

To file a formal complaint, you must put your complaint in writing and sign it. Your attorney, if one represents you may sign the form in your stead. If someone who is not an attorney represents you, you must sign the complaint yourself.

The Equal Employment Opportunity Commission (EEOC) requires that all complaints that arise at any NASA installation be filed against the agency.

- Your complaint must be filed with the Director, Discrimination Complaints Division Code EC
NASA Headquarters
Washington, DC 20546.
- You may use NASA Form 1355 Complaint of Discrimination. This form will be given to you by your EEO counselor as an attachment to the notice of right to file a formal EEO complaint.
- **To be timely, your complaint must be postmarked no later than 15 calendar days after you receive the notice of the right to file a formal complaint.** Alternatively, you could hand deliver it no later than 15 calendar days after you received said notice.

Keeping the Agency Informed

If you change your mailing address, you must notify the Discrimination Complaints Division (address above). If you fail to keep the office informed of your current address, your complaint may be dismissed.

ADR May Be Offered Again

NASA Headquarters may offer Alternative Dispute Resolution (ADR) options at various points during the formal complaint process. If ADR is offered during the formal stage, NASA Headquarters will arrange for the mediators. The Goddard EEO office may assist in making arrangements for the mediation conference. Generally in order to assure that a complaint is processed in a timely manner, if you elect to pursue an ADR option during the formal complaint stage, the complaint investigation will continue in parallel unless a settlement is reached.

What to Expect in the Formal Complaint Stage

The formal EEO complaint process is managed at NASA Headquarters for all of the NASA Centers. Headquarters makes the decision to accept or reject a complaint, conducts the investigation and ultimately makes the determination on the merits of the case. During the formal stage, the Goddard EEO office will assist with onsite logistics, be available for advice, and at any time, is willing to facilitate settlement of issues.

Documentation is a key element of the formal complaint stage. The record is built, a finding is made and, if warranted, correction action is taken.

Acknowledgement

In response to your formal complaint, NASA Headquarters Discrimination Complaints Division will send you a letter of acknowledgment. The letter will also provide written notification of your rights and provide you with the time requirements for exercising those rights. It is an important letter to keep.

Acceptance or Rejection

After a review of the counselor's report, the Headquarters will notify you of the decision to accept or reject your complaint for investigation. If your complaint is accepted, the issues to be investigated will be stated in formal terms. The investigation will be limited to those issues, unless your complaint is formally amended.

If your complaint is rejected, you will receive a letter from Headquarters explaining the reasons for the dismissal and outlining your appeal rights should you disagree with the decision.

If Headquarters believes that part of your complaint should be dismissed, you will receive a letter outlining those claims that will be investigated and an explanation of those that will not.

Investigation

If Headquarters accepts your complaint or any part of it for investigation, it then assigns the complaint to an EEO investigator. EEO investigators are usually hired from a pool of contractors who are randomly assigned to complaint cases throughout the agency. The EEO complaints investigator collects factual information about the stated issues and prepares a report. He or she does not take the side of any of the parties in the dispute. The investigative report does not contain the investigator's opinion on the merits of the case or his or her conclusion concerning the claim of discrimination.

While your case is in the investigative stage, you may ask to add issues to the investigation that are like or related to the issues in your case. You should make this request within

45 days of the date of the new incident that you believe was discriminatory, or if it is a personnel action, within 45 days or the effective date of the action. Your request must be in writing and must be mailed or delivered to the Discrimination Complaints Division, Code EC, NASA Headquarters, Washington DC 20456.

If you have more than one complaint at the formal stage, NASA will likely consolidate them into one investigation.

The complaints investigator tries to complete the investigation within 180 days from the date the complaint is filed. With your written consent, the investigation period may be extended up to an additional 180 days. However, when consolidating two or more complaints for investigation, or when amending a complaint under investigation to include like or related issues, the investigation may continue for up to 360 days after the filing date of the original complaint.

Meeting with the Investigator

The complaints investigator will take sworn testimony in the form of affidavits from relevant persons. Your designated representative may help you draft language for your affidavit, but only you can sign it. Your statement must be true and correct.

The investigator may ask you to provide evidence about remedies to which you believe you are entitled. You must provide that evidence, including medical reports and other personal documents.

There are penalties for false testimony. Section 1001, Title 18 of the United States Code states that whoever, in any matter

within the jurisdiction of the executive branch of the United States Government, which includes NASA, knowingly and willfully

...falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years or both.

Providing information that a complaints investigator requests is mandatory both for you and any NASA employee witnesses. If you do not provide the information the investigator requests, your complaint may be dismissed.

Report of Investigation

When the investigation is completed, a sanitized copy of the report will be provided to you, your designated representative, and to the Goddard EEO office. The Report of Investigation (ROI) will contain all of the documentation compiled by the agency relative to your complaint to date, including a copy of the original complaint, copies of all your correspondence with the Discrimination Complaints Division, and the materials gathered by the investigator. Material that compares Privacy Act data will be sanitized so that the names of employees cannot be linked with sensitive information. A key to the data will be kept at NASA Headquarters.

Decision

The letter that accompanies the ROI will explain your options regarding obtaining a decision on the merits of your complaint. Within 30 days of the date you receive the report (it will be sent certified mail), you may request either a hearing before the EEOC or a decision from NASA without a hearing. You may also be offered the opportunity to participate in an ADR program at this time.

- To request a hearing, send your request directly to the EEOC district office that serves your geographic area within 30 days of your receipt of the investigative report. Be sure to send a copy of your request for hearing to the Discrimination Complaints Division, NASA Headquarters, Code EC, Washington, DC 20546.
- If you request a hearing in a timely manner, NASA Headquarters will send your complaint file to the EEOC. The EEOC then decides whether to conduct a hearing on some or all of the issues in the case.
- If your case goes to an EEOC hearing, it will be referred to an attorney in the Goddard Chief Counsel's Office. That attorney will represent NASA at the hearing.
- Each hearing is different – it depends on the issues in the case and nature and concerns of the judge. Often more evidence is gathered through a process called discovery. Usually the judge will also explore options for settlement before holding a hearing.

- Following the hearing, the EEOC judge will send copies of his or her decision containing findings of fact and conclusions of law to you and to NASA Headquarters. The Agency has 40 days from the date of receipt to issue its Notice of Final Action. The final action may carry out the judge's decision, in full or in part, or it may decline to follow the judge's decision. If NASA decides that its final action will not fully carry out the judge's final decision, then the Agency must file an appeal with the EEOC. Regardless of NASA's determination, you will be notified of its final action and provided with applicable appeal rights within 40 days of the Agency's receipt of the judge's findings.
- If you do not request an EEOC hearing within 30 days of your receipt of the investigative file or if you request a final decision without a hearing, NASA will issue a final decision – usually within 60 days.
- The letter that contains the final NASA decision will also inform you of your appeal rights.

Withdrawals, Settlements and Remedies

You may withdraw or settle a complaint at any stage of the process.

Withdrawing a Complaint

If you decide to withdraw a complaint, put your withdrawal in writing, sign it, and deliver it to the Goddard or Wallops EEO office.

Settling a Complaint

It is Goddard policy to settle complaints informally through good negotiation and mutual agreement whenever possible and practicable. When you agree to settle a complaint, you are agreeing that you have received something that has value to you, in other words – something that has merit, desirability, or importance to you.

- If you wish to do so, you may seek the advice of an attorney or other qualified representative before you agree to settle your EEO complaint.
- If you agree to settle a complaint based on one or more stipulations, these must be written down, agreed upon, and signed by both you and by a management designee. The EEO officer must also approve all settlement agreements.
- Procedures to follow if either party comes to believe the settlement has been breached will be specified in the agreement and will be in accordance with EEOC regulations.

Settlements of Complaints Involving Age Discrimination

The Older Worker Benefit Protection Act (OWBPA) provides that the Agency must advise employees who are settling age discrimination claims to consult with an attorney prior to signing the settlement agreement. Under the OWBPA the complainant has 21 days to review and consider a settlement agreement before signing it and 7 days to revoke the agreement once it has been signed.

Remedies Not Available to You Under Law

If you are offered relief, it may not be the relief you requested. The following remedies are not available to you in discrimination cases that arise under the enforcement of the EEOC.

- Punitive damages
- Attorney fees if:

The fees are incurred before you file a formal complaint, unless the complaint goes to hearing and the administrative judge awards those fees as part of the settlement.

You fail to notify NASA that an attorney is representing you.

You file an age discrimination complaint or an Equal Pay Act complaint.

- Compensatory damages are not available if you file an age discrimination or Equal Pay Act complaint. In addition if NASA has made a good faith effort to provide a reasonable accommodation, regardless of whether there is a finding of discrimination compensatory damages are not available in a Rehabilitation Act complaint.

Special Types of Cases

Because not all of the laws that pertain to EEO complaints were passed at the same time, there are some gaps that could affect your particular claim. The most common areas of overlap occur in Age Discrimination in Employment Act and Equal Pay Act cases. In addition, some overlap of cases can occur when an employee believes that illegal discrimination is a motivation for the types of adverse personnel actions that can be appealed to the Merit System Protection Board.

Age Discrimination in Employment Cases

If you believe you have been discriminated against based on age (≥ 40), you have the right to use the EEO complaint process as described in this booklet or to bypass it altogether and



directly file a civil action in an appropriate U.S. district court pursuant to the Age Discrimination in Employment Act (ADEA).

Filing an ADEA Civil Action

If you elect to use the Agency EEO complaint process and file a formal complaint, you cannot proceed to court unless the Agency fails to complete the investigation within 180 days, fails to issue an Agency Decision within the required time frame, or the Agency has issued a Final Decision.

Notices of intent to sue must be filed in writing with the EEOC. Personal delivery may be made to:

Equal Employment Opportunity
Commission
Office of Federal Operations
Federal Sector Operations
1801 L Street NW
Washington DC 20507-0002

Or mailed to:
Equal Employment Opportunity
Commission
Office of Federal Operations
Federal Sector Operations
P.O. Box 19848
Washington DC 20036-9848

The notice of intent to sue should be dated and must contain the following information:

1. Statement of intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act of 1967, as amended.
2. Name, address, and telephone number of the employee or applicant.

3. Name, address, and telephone number of the complainant's designated representative, if any.
4. Name and location of the NASA installation where the alleged discriminatory action occurred.
5. Date on which the alleged discriminatory action occurred.
6. Statement of the nature of the alleged discriminatory actions.
7. Signature of the complainant or the complainant's representative.

Reminder: After the notice of intent to sue is timely filed, you must wait at least 30 days before filing the civil action.

Filing a Formal EEO Complaint Under ADEA

If you elect to use the Agency EEO complaint process and file a formal EEO complaint, you must complete certain steps in that process before you can go to court. You cannot proceed to court unless one of the conditions outlined on page 20 are met.

Equal Pay Act Cases

You may file an Equal Pay Act (EPA) wage discrimination lawsuit in a court of competent jurisdiction without filing a sex-based administrative complaint under the EPA or Title VII. Alternatively, you may choose to file a sex based EEO complaint of wage discrimination with NASA under the EPA, Title VII, or both.

Mixed EEO and Merit System Protection Board Cases

You may be able to raise a complaint of discrimination with the Merit Systems Protection Board (MSPB) in what is called a mixed-case appeal. A mixed-case is one where an action appealable to the MSPB is combined with a claim of discrimination.

NASA employees with one or more years of current continuous service in the same or a similar position may appeal adverse actions to the MSPB. Adverse personnel actions include:

- Suspension of more than 14 days.
- Reduction in grade and/or pay.
- Furlough of 30 days or less.
- Constructive discharge.
- Removal.
- Reduction in Force (RIF), but only relation to preference eligibility.

Processing of Mixed-Case Complaints

If you choose to file an appeal with the MSPB, you must file your appeal within 30 days of the disciplinary or personnel action involved.

You may receive informal EEO counseling on mixed-complaint issues, but you may not file a formal EEO mixed-case complaint with NASA and a mixed-case appeal with the MSPB at the same time. What you choose to do first, that is file an appeal with the MSPB, or file a formal EEO complaint of discrimination, determines how your claim will be processed.

- If you decide to file a formal mixed-case complaint with the Discrimination Complaints Division at NASA Headquarters, it will be assigned a complaints investigator. After the investigation is completed, you will receive a copy of the Report of Investigation and the final Agency decision.
- If you first file a mixed-case complaint with NASA Headquarters, you may abandon the EEO complaint process and file an appeal with MSPB if 120 days have expired since you filed the formal complaint and no final NASA decision has been issued.
- You may appeal the NASA's final agency decision to MSPB – but not to the EEOC – and request a hearing within 30 calendar days of receiving the decision, or file a civil action in the appropriate U.S. district court within 30 calendar days of receiving it.

If you decide to appeal to the MSPB, you may ask EEOC to review the MSPB administrative judge's decision on the discrimination aspects of your appeal.

Class Action Complaints

If you are considering bringing forward a class action complaint, i.e., acting as a class agent, you must also seek EEO counseling within 45 days of an alleged discriminatory event. The typical counseling period of 30 days can be extended by 60 days if agreed to in writing as described in the informal process on page 8. However, if during the counseling period it seems “reasonable” to pursue class certification, counseling will be suspended.

A formal class complaint must be filed with NASA Headquarters:
Discrimination Complaints Division
Code EC
Washington DC 20456

- NASA Form 1549: Class Discrimination Complaint may be used and can be obtained from the Goddard EOPO.
- The complaint must be signed the Class Agent or the Class Representative.
- The complaint must identify the policy or practice believed to adversely affect class as well as the action specific action or policy which impacted the class agent

Unlike an individual complaint, a class action is not accepted or rejected by NASA. It is either certified or dismissed by the EEOC. The prerequisites for certification are outlined under §1614.204.(a)(2).

Details on the processing of class action complaints in the government are contained in Title 29 CFR § 1614.204 and in the EEOC Management Directive 110, Chapter 8.



For additional information contact the Equal Opportunity Programs Office, 301-286-7348 (Voice, TTY).

If You Are A Contractor

Goddard Contractors may qualify as “federal employees” within the meaning of the anti-discrimination statutes. Contract workers will qualify as “federal employees” only if they meet certain criteria that show that Goddard exercises control over the means and manner of their work performance. To initiate the complaint process you must contact the EEO Office within 45 days of the alleged incident of discrimination.

In order for the center to determine if you have potential “federal employee” status, an EEO Office member will ask you to provide information concerning the degree to which NASA exercises control over your work. The EOPO staff will analyze the information you provide and make a determination of your status. If the center decides that you qualify as a “federal employee,” you will have the same informal process options as any Goddard civil service employee. If the center decides that you do not qualify, you have the right to file a formal complaint with NASA Headquarters.

If you participate in the center informal process and your claims are not resolved, you have the right to file a formal EEO complaint. At that time NASA Headquarters will review your eligibility to make use of the federal process. If Headquarters determines that you are not eligible, you have the right to appeal to the EEOC.

In any event, you should simultaneously pursue redress under the processes available through your company and the EEOC in addition to making use of the federal complaint process.

If You Are a Bargaining Unit Member

Some of Goddard’s unions provide a process for grieving issues of illegal discrimination. If you are a bargaining unit member, you may elect to file a discrimination complaint through the union. However, **you cannot file both a union grievance and a formal EEO complaint on the same issue.** Time frames for filing union grievances are often shorter than those for pursuing EEO complaints; so if you are considering that option, check with your union steward.



Definitions of Discrimination

There are two fundamental forms of discrimination: disparate treatment and disparate impact.

Disparate Treatment

Individuals are treated differently in the sense of being dealt with less favorably or unequally, because of reasons related to their race, color, sex, religion, national origin, age or handicap, and management fails to offer a legitimate non-discriminatory reason for the difference. This type of discrimination may be the result of:

- A discriminatory animus (evil intent)--a biased attitude or bigotry. For example: "African-Americans don't make good engineers. They don't belong in a lab."
- Accepted beliefs and stereotypes--a set of beliefs or stereotypes (without evil intent) that lead to different treatment. For example: "Asian-Americans are great engineers, but they really don't want to be supervisors."
- Failure to understand what constitutes different treatment—a decision or action that makes sense and could be defended except for the fact that it causes different treatment to take place. For example: "She is excellent, but I am not going to assign her over there because you and I both know that those guys will not accept a woman's opinion on anything. They'll really give her a hard time."

This type of discrimination can be determined by comparing ways that individuals are treated.

References:

McDonnell Douglas Corp. v. Green 411 U.S. 792(1973)

McDonald v. Santa Fe Trail Transportation Co.

Disparate Impact

Although individuals are not treated differently on the surface, the result of the policy or procedure has an adverse effect or falls more harshly upon a specific group that is identifiable in terms of race, color, sex, religion, national origin, age or disability. This form of discrimination frequently involves underlying systemic assumptions about job requirements when there is no real job-related justification for the factor(s) that create the disparate impact. For example:

- Height and weight requirements that are not required for successful job performance.
- Education and experience that are not related to job performance.
- Examinations that do not measure knowledge, abilities, skills and other characteristics required to do the job.

This type of discrimination can be determined by examining cause-and-effect relationships in terms of characteristics of the group involved and the necessity or job relatedness of the factor causing them to be adversely affected.

References:

Griggs v. Duke Power 401 U.S. 424 (1971)

Teamsters v. U.S. 431 U.S. 324 (1977)

Boyd v. Ozark Airlines 568 F. 2d. (1977)

A Note About Workplace Harassment

Harassment is a form of discrimination. Due to our social context and the pervasiveness of the problem, sexual harassment has received more attention from the EEOC than other forms of discriminatory harassment. However, hostile or offensive environment type of harassment can have content based on race, color, national origin, age, disability, religion as well as gender.

Because of the unique aspects of sexual harassment, in 1980 the EEOC issued specific guidance stating that unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute harassment when:

- a) Submission to such conduct is made a term of condition of employment;
- b) Submission to or rejection of such conduct by an individual is used as a basis for decisions affecting that person; or
- c) Such conduct has the purpose or effect of unreasonable interference with an individual's work performance or creating a hostile, intimidating, or offensive working environment.

This definition identifies two types of sexual harassment quid pro quo and a hostile or offensive work environment. Most people recognize quid pro quo harassment immediately. It corresponds to parts a) and b) above. It has direct impact on a person's career.

The elements of a hostile or offensive work environment are often more subtle to identify.

In hostile environment cases, the EEOC guidelines define the primary question as whether or not the conduct "unreasonably interfered with an individual's performance" or created "an intimidating, hostile, or offensive work environment." In these cases, the standard of judgment rests on the concept of what a "reasonable" person would consider hostile. Factors considered are: 1) the nature of the conduct (verbal, physical or both), 2) frequency, 3) whether the conduct was blatantly hostile, 4) whether the alleged harasser was a supervisor or co-worker, 5) whether others joined in the harassment, and 6) whether the harassment was directed at more than one person. Each case is different and requires an assessment of the totality of circumstances.

Resources

Goddard Equal Opportunity Programs Office (EOPO):

301-286-7348

<http://eeo.gsfc.nasa.gov>

EEO Counselors:

<http://eeo.gsfc.nasa.gov/complaints.html#couns>

Goddard ADR Program:

301-286-0482

<http://adr.gsfc.nasa.gov>

Equal Employment Opportunity Commission:

<http://www.eeoc.gov>

Merit System Protection Board

<http://www.mspb.gov>



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